

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 \* \* \*

7 UNITED STATES OF AMERICA,

Case No. 2:16-cr-00046-PAL-GMN

8 Plaintiff,

9 v.

ORDER

10 PETER T. SANTILLI, JR.,

(Mot. Sever – ECF No. 1833)

11 Defendant.

12 Before the court is Defendant Peter T. Santilli Jr.’s (“Santilli”) Motion to Sever (ECF  
13 No. 1833). This motion is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and  
14 LR IB 1-3 of the Local Rules of Practice. The court has considered the motion, and the  
15 Government’s Response (ECF No. 1879). No reply was filed and the time for filing a reply expired  
16 April 27, 2017.

17 **BACKGROUND**

18 Santilli is one of 19 defendants charged in a 16 count superseding indictment. He has been  
19 severed for trial and scheduled to be tried with co-defendants Cliven Bundy, Ammon Bundy, Ryan  
20 Bundy, and Ryan Payne after trial of the third tier defendants. In the current motion, Santilli seeks  
21 an order severing him from the other co-defendants with whom he is set for trial “if after a  
22 canvassing of protesting co-defendants there is no resolution.” The motion claims that his other  
23 co-defendants, except Cliven Bundy, “have decided it is more important to protest jail procedures  
24 they feel violate their rights instead of preparing for a defense in the upcoming case in which they  
25 are facing life in prison.” Ammon Bundy recently came to court in his underwear in protest.  
26 Santilli has focused his defense to prepare for the allegations he faces. The timing of the Bundy  
27 jail protests has eliminated their contact with counsel during crucial trial preparation, and Santilli  
28 fears he will not be adequately prepared for trial unless they “immediately come to their senses

1 and start preparing for the trial with counsel.” The motion represents that counsel for Santilli has  
2 spoken with the trial counsel for his co-defendants who are doing their best to prepare without the  
3 assistance of their clients. However, counsel do not have client control “and are merely hopeful  
4 that their clients’ protests will not spill over into the trial.” Santilli argues that he should be severed  
5 from the trial of his co-defendants because he cannot possibly receive a fair trial when three of his  
6 co-defendants are protesting.

7 The government opposes the motion arguing Santilli has failed to demonstrate manifest  
8 prejudice from his joinder with his co-defendants. Santilli, Cliven, Ryan and Ammon Bundy, and  
9 Ryan Payne are set to be tried in the second of three groups for trial. Severance motions have been  
10 exhaustively briefed and fully argued resulting in the court’s 27-page Order (ECF No. 1109),  
11 entered December 13, 2016, severing the case into three separate trials. The court has already  
12 ruled that severance into three trial tiers is appropriate under Rule 14(a), and the circumstances of  
13 this case. Santilli offers no reason why, based on his co-defendants’ complaints about their jail  
14 conditions, the court should upend its “reasoned order of severance.” If Santilli’s concerns about  
15 his co-defendants’ conduct actually come to pass, he can seek cautionary admonishments and  
16 instructions that require jurors to consider the evidence separately as to each defendant.

17 The government also asks that the court deny Santilli’s request that the court canvass his  
18 co-defendants. The government states it is unclear why Santilli wants a hearing to make a record  
19 as to his co-defendants’ protests. There are a number of motions filed on the record by his co-  
20 defendants that address their complaints about jail conditions. To the extent Santilli fears that his  
21 co-defendants may misbehave or protest during the second trial, the court has many procedural  
22 tools to curb misconduct. It may admonish jurors to disregard misconduct and consider only the  
23 evidence in court rather than individual defendant outbursts, and instruct the jury to ensure that the  
24 government is held to its stringent, beyond a reasonable doubt burden of proof. No pretrial hearing  
25 or canvas is needed.

## 26 DISCUSSION

27 Santilli has taken various positions over the course of this case regarding severance and  
28 with whom he should be tried. He initially argued he should be severed from all of his co-

1 defendants and tried by himself. *See* Santilli's Mot. to Sever (ECF No 429). In his initial severance  
2 motion, he argued he has a "wholly different defense" than his co-defendants because he was  
3 merely covering events taking place at the Bundy ranch as a new breed of journalist. He claimed  
4 his activities were protected speech under the First Amendment. He also claimed that being tried  
5 with Cliven Bundy would prejudice him because of certain actions and tactics taken by former  
6 counsel for Cliven Bundy, which had "caused a rift" that had spilled over to him.

7 In response to the government's motion to sever the case into three groups for trial, Santilli  
8 reiterated his request for a separate trial, but argued in the alternative that all of the defendants be  
9 tried in a single trial. *See* Response (ECF No. 1052).

10 The court entered an Order (ECF No. 1109) denying Santilli's first Motion to Sever (ECF  
11 No. 429) on December 13, 2016. Counsel for Santilli filed a Motion to Reconsider Magistrate  
12 Judge's Order Severing His Trial Date (ECF Nos. 1118). In his motion to reconsider, he asked  
13 that the district judge overrule the undersigned's order setting the first group of defendants for trial  
14 on February 6, 2017. He argued that the most expeditious way to try this case would be to take  
15 the first 8 to 11 defendants named in the superseding indictment to trial first. This group was  
16 labeled by the government as leaders and organizers. He maintained that the "normal method" of  
17 placing the top half of defendants into a trial "always resolves the remaining defendants in a case."  
18 He reasoned that trying the "first and most involved group" first has historically resolved a case  
19 as a whole. He stated he wanted to be tried with the first 8 to 11 defendants because these were  
20 the defendants alleged to have organized the protest at the Bundy ranch. He had spent months  
21 preparing with others to present a group defense based on the notion that he would be tried with  
22 the Bundy family members with whom he is alleged to have conspired. His defense would be  
23 bolstered by being within the first group of defendants as they were all at different places during  
24 the alleged unlawful conduct, and the perspectives of each of the defendants' own witnesses and  
25 individual testimony would enhance their case in chief.

26 Chief District Judge Gloria M. Navarro noted that Santilli had not cited any legal authority  
27 or case law to support his argument, found that the undersigned's order was not clearly erroneous  
28 or contrary to law, and therefore denied his motion. *See* Order (ECF No 1214).

1 Santilli now seeks a severance from Ammon Bundy, Ryan Bundy and Ryan Payne “if after  
2 a canvass of protesting co-defendants there is no resolution” because his perception is that they  
3 are more interested in protesting the conditions of their confinement than preparing for trial. The  
4 only inappropriate courtroom conduct Santilli cites is Ammon Bundy’s decision to come to court  
5 in his underwear in protest. The court is informed that Ammon Bundy refused to dress out and  
6 was transported to court in his underwear to appear before Judge Navarro on March 24, 2017, at a  
7 sealed ex parte hearing to consider a pro hac vice petition. *See* Sealed Ex Parte Mins. of  
8 Proceedings (ECF No. 1759). The district judge addressed this issue with him, made it clear this  
9 conduct would not be tolerated, and that he would be relegated to participating in the trial through  
10 his attorney and listening to the proceedings via audio if he failed to comply with court orders and  
11 appropriate court decorum.

12 For the December 9, 2016 hearing before the undersigned, Ammon and Ryan Bundy took  
13 the position, as articulated by counsel and standby counsel, that it was the U.S. Marshal Service’s  
14 responsibility to take them into court and refused to walk in of their own volition. The court  
15 granted the request of counsel and standby counsel to confer before the hearing began. Counsel  
16 confirmed that their clients had the ability to walk in but were declining to do so. The court  
17 declined to order the USMS to use physical force to bring them in, made sure they could listen to  
18 proceedings in the holding cell, and advised them that if they changed their minds they could enter  
19 the courtroom at any time during the hearing. The court is not aware of any instance in which  
20 Ryan Payne has engaged in any inappropriate courtroom conduct.

21 Although Santilli previously had concerns about the tactics of former counsel for Cliven  
22 Bundy, the current motion articulates no concerns about Mr. Bundy or his counsel.

23 Santilli’s motion does not describe the jail protests of co-defendants Ryan and Ammon  
24 Bundy or Ryan Payne about which he is concerned. He does not specify how their jail protests  
25 have affected his own trial preparation, other than stating they are spending more time protesting  
26 than he thinks prudent given their upcoming trial. These defendants have filed motions addressing  
27 their disagreements with certain conditions of their confinement. The motions and the court’s

28 ///


1 orders deciding them are part of the record. Santilli does not articulate what type of canvass of his  
2 protesting co-defendants the court should conduct, or what he thinks it would accomplish.

3 Finally, as a footnote in the government's response points out, Santilli has not always been  
4 a model of appropriate courtroom decorum himself.

5 In short, the court has many procedural tools to address any inappropriate courtroom  
6 conduct by Santilli's co-defendants. The court finds Santilli has not met his burden of  
7 demonstrating undue prejudice of such a magnitude that, without severance, he will be denied a  
8 fair trial. *See United States v Jenkins*, 633 F 3d 788, 807 (9th Cir. 2011). A joint trial is particularly  
9 appropriate in a conspiracy case because the concern for judicial economy is less likely to be  
10 outweighed by possible prejudice to the defendants when much of the evidence would be  
11 admissible against each of them in separate trials. *Id.*; *United States v Fernandez*, 388 F 3d 1199,  
12 1242 (9th Cir. 2004) (internal citations and quotations omitted).

13 **IT IS ORDERED** Santilli's Second Emergency Motion to Sever (ECF No. 1833) is  
14 **DENIED.**

15 DATED this 1st day of May, 2017.

16  
17   
18 PEGGY A. LEEN  
19 UNITED STATES MAGISTRATE JUDGE  
20  
21  
22  
23  
24  
25  
26  
27  
28